

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARILYN SMITH,
Plaintiff

vs.

DOD DLA DDSP,
ROBERT M GATES,
JO ANN SCHOPMAN,
COMPONENT DDC POC,
Defendants

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CIVIL NO. 1:CV-09-0413

M E M O R A N D U M

We are considering the motion of defendant, Robert M. Gates, the Secretary of Defense, to dismiss the pro se plaintiff's fourth amended complaint. On March 30, 2010, we granted the defendants' motion to dismiss all the claims except her age-discrimination claim against Gates. We granted Plaintiff leave to file a fourth amended complaint setting forth facts in support of that claim. Plaintiff did file the amended complaint. Defendant argues that it is deficient because, among other allegations, it provides only a one-sentence conclusory assertion of age discrimination, and hence fails to state a claim upon which relief may be granted. Plaintiff has not opposed the motion.

Upon review of the motion, we will grant it. As the defendant notes, a complaint has to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L.Ed.2d. 929 (2007). "[M]ore than labels and conclusions" are required. *Id.* at 555, 127 S.Ct. at 1964-65. Here, as the defendant points out, Plaintiff conclusorily alleges that the defendant "discriminated against [her] based on age" (Doc. 55, CM/ECF

p. 2, first paragraph). That is not sufficient. Additionally, because we advised Plaintiff in our March 30, 2010, order, and the accompanying memorandum, *Smith v. DOD DLA DDSP*, 2010 WL 1390854, at *9 (M.D. Pa. Mar. 30, 2010), that she had to allege facts in support of her claim, leave to file another amended complaint would be futile.

We will issue an appropriate order.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

Date: May 4, 2010

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O R D E R

AND NOW, this 4th day of May, 2010, it is ordered that:

1. Plaintiff's motions (doc. 40, 47, 62 and 64) are dismissed.
2. Defendant Gates' motion (doc. 57) to dismiss the fourth amended complaint (doc. 55) is granted and the fourth amended complaint is hereby dismissed.
3. The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge